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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 430 OF 2018

STATE OF HIMACHAL PRADESH … APPELLANT(S)

VERSUS

CHAMAN LAL … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. The instant Criminal Appeal has been preferred by the State of Himachal Pradesh assailing the Final Judgment and Order dated 26.08.2014 passed by the High Court of Himachal Pradesh at Shimla[1] in Criminal Appeal No. 295 of 2010, whereby the High Court allowed the appeal preferred by the respondent and set aside the judgment of conviction dated 16.07.2010 and the consequential order of sentence dated 03.08.2010 passed by the Sessions Judge, Chamba Division, Chamba, Himachal Pradesh[2] in Sessions Trial No. 19 of 2010, thereby

[1] Hereinafter referred to as "the High Court"
[2] Hereinafter referred to as "the trial Court"

acquitting the respondent of the charge under Section 302 of the Indian Penal Code, 1860[3].

2. The case of the prosecution is that on 07.12.2009, the respondent-husband Chaman Lal allegedly poured kerosene on his wife Saro Devi (deceased) at their residence situated in Village Rampur, Pargana Dhundi, Tehsil and District Chamba, Himachal Pradesh and set her on fire by lighting a matchstick. On seeing her engulfed in flames, some villagers rushed to her rescue and the respondent also attempted to extinguish the fire. Despite these efforts, the deceased sustained severe burn injuries. The information was conveyed to her brother, Ramesh Kumar, who arrived at the spot and made arrangements to take her to the District Hospital, Chamba where she was provided with medical treatment. After receiving initial treatment at Chamba, her condition did not improve and she was referred to Tanda Medical College and Hospital on 15.12.2009 where she was provided with further treatment. When the doctor opined that there was no chance of improvement, the brother of the deceased took her back to his home on 22.12.2009, after which he continued to look after her. On 15.01.2010, she succumbed to her injuries.

3. Based on the information given by the brother of the deceased, FIR No. 292 of 2009 was registered under Section 302 IPC against the respondent at Police Station Sadar, Chamba on 08.12.2009. During the investigation, it was

[3] For short, "IPC"

revealed that the respondent had contracted a love marriage with the deceased and three children were born out of the said wedlock. However, their relationship had become strained and on the fateful day, i.e. on 07.12.2009, the accused poured kerosene upon the deceased and set her on fire, thereby causing her death. Upon information given by the brother of the deceased, ASI Mukesh Kumar came to the hospital. On his intimation, the Tehsildar of the Chamba region reached the hospital and recorded the statement of the deceased, which was treated as Dying Declaration.

4. After completion of the investigation, a challan under Section 302 IPC was prepared and filed before the Chief Judicial Magistrate, Chamba. The Magistrate upon examining the record and complying with the provisions of Section 207 of the Code of Criminal Procedure, 1973[4], found that the case was exclusively triable by the Court of Sessions and accordingly, committed it to the Sessions Court.

5. The trial Court, after hearing the respondent and the prosecution and on the basis of the materials available on record, framed a charge under Section 302 IPC. The respondent pleaded not guilty and claimed to be tried.

6. The prosecution led its evidence. Thereafter, the statement of the respondent was recorded under Section 313 Cr.P.C. He was given an

[4] For short, "Cr.P.C"

opportunity to lead evidence in defence. After trial and upon perusal of the materials brought on record by the parties, the trial Court found the respondent guilty of the offence under Section 302 IPC and accordingly convicted and sentenced him to imprisonment for life and to pay a fine of Rs. 50,000/- and in default thereof, to undergo simple imprisonment for a further period of three years. The period of detention undergone during investigation and trial was directed to be set off against the sentence imposed.

7. Aggrieved by the judgment of conviction and the order of sentence imposed by the trial Court, the respondent preferred Criminal Appeal No. 295 of 2010 before the High Court. By its judgment dated 26.08.2014, the High Court set aside the judgment of conviction and the order of sentence dated 16.07.2010 and 03.08.2010 respectively and acquitted the respondent of the charge under Section 302 IPC by extending to him the benefit of doubt.

8. Challenging the aforesaid judgment of acquittal, the State of Himachal Pradesh has preferred the present Criminal Appeal before this Court.

9. Mr. Vivek Kumar, learned counsel appearing on behalf of the appellant – State submitted that the deceased Saro Devi was married to the respondent in the year 2002. The couple resided in Village Rampur, Tehsil and District Chamba, Himachal Pradesh. It was alleged that there were disputes and frequent quarrels between the husband and wife owing to the respondent's suspicion

regarding the character of the deceased. On the evening of 7th December 2009, it was alleged that the respondent poured kerosene oil upon his wife and set her on fire with a matchstick at their residence. The deceased sustained severe burn injuries to the extent of 70% and the respondent also sustained about 3% burn injuries on his hand. Despite treatment, the deceased succumbed to her injuries on 15.01.2010.

9.1. It was further submitted that on 08.12.2009, the Tehsildar-cum-Executive Magistrate, Amar Singh (PW-1) recorded the dying declaration (Ext. PW-1/B) of the deceased at the hospital, after medical certification of her fitness and in the presence of the Deputy Superintendent of Police, K.D. Sharma (PW-10) and the Investigating Officer, ASI Mukesh Kumar (PW-12). In her statement, the deceased categorically stated that her husband had set her on fire after insulting her by calling her a *"Kanjri"* (woman of bad character). It was contended that the trial Court rightly relied upon the dying declaration and convicted the respondent. However, the High Court erroneously acquitted the respondent by discarding the dying declaration on the sole ground of alleged discrepancies relating to the time of arrival of the Tehsildar at the hospital.

9.2. The learned counsel submitted that the High Court committed a serious error in holding that the time of arrival of the Tehsildar was doubtful relying selectively on one statement of the brother of the deceased (PW-2). The High Court failed to appreciate that PW-2 upon being specifically questioned,

corroborated the version of PW-1, PW-10 and PW-12, all of whom consistently stated that the Tehsildar reached the hospital around 11.00-11.15 a.m. The High Court thus erred in isolating one portion of PW-2's testimony and ignoring consistent corroborative evidence.

9.3. It was submitted that the High Court further erred in discarding the testimony of PW-10, who was an independent witness to the recording of the dying declaration. He deposed that the statement of the deceased was dictated by the Tehsildar word by word. The defence did not put any question or suggestion to PW-1 during cross-examination and that the statement was improperly recorded. In the absence of any challenge, the High Court could not have drawn an adverse inference on this aspect.

9.4. The learned counsel submitted that the High Court wrongly relied upon the testimonies of the ward member Om Prakash (PW-4) and Ravindra (PW-5). PW-4, who for the first time before the Court introduced a version that the deceased had poured kerosene upon herself, which he admittedly did not make in his statement before the police thereby rendering his testimony a material improvement and inherently unreliable. Similarly, PW-5 though declared hostile, was nevertheless relied upon by the High Court despite her close relationship with the respondent-she being his paternal aunt (bua). Her testimony being naturally biased, ought to have been discarded and could not have formed the basis of any finding in favour of the respondent.

9.5. It was further submitted that the High Court gravely erred in accepting the testimony of DW-2, the minor son of the respondent who sought to set up a plea of alibi by stating that his father was working in the kitchen garden at the relevant time. The testimony of DW-2 stands in direct contradiction to that of PW-12, the Investigating Officer, who categorically stated in his cross-examination that during the course of inquiry, the children of the deceased had informed him that they were playing outside at the time of the incident. The High Court therefore committed a manifest error in placing reliance on defence evidence which was inconsistent and stood expressly contradicted by the prosecution witnesses.

9.6. The learned counsel submitted that the High Court failed to properly appreciate the credible and independent testimony of the Tehsildar (PW-1) who categorically deposed that the deceased had stated before him that her husband poured kerosene upon her after calling her a *"Kanjri"*. The said statement coming from an independent and disinterested public servant, not only establishes the overt act attributable to the respondent but also furnishes a clear and proximate motive for the commission of the offence. Significantly, nothing adverse was elicited in the cross-examination of PW-1 so as to cast any doubt on his credibility or veracity. The High Court therefore fell into manifest error in holding that no motive stood established against the respondent. The further observation that the absence of any pending court proceedings between the

spouses indicated lack of animosity is wholly misconceived and legally unsustainable. It is well settled that matrimonial discord and animosity between spouses do not necessarily manifest in the form of litigation. The surrounding circumstances, when read conjointly with the testimonies of PW-1 and PW-2 clearly demonstrate strained marital relations and provide sufficient motive for the commission of the offence.

9.7. It was submitted that the High Court has erred in discarding the dying declaration which was duly recorded by the Tehsildar-cum-Executive Magistrate in the presence of responsible officers and stood fully corroborated by both medical and ocular evidence.

9.8. The learned counsel further drew our attention to the suspicious post-incident conduct of the respondent. PW-2 deposed that the respondent did not contact him directly to inform him about the condition of his sister. Instead, as testified by Yashpal (PW-3) the respondent contacted PW-3, who in turn conveyed the information to PW-2. Such conduct is wholly unnatural for a husband and strongly indicative of a guilty mind.

9.9. The learned counsel ultimately submitted that the findings recorded by the High Court are based on a clear misappreciation of evidence and consideration of wholly irrelevant factors while completely ignoring the cogent, reliable and trustworthy testimonies of independent witnesses including PW-1,

PW-10 and PW-12. Conversely, undue reliance was placed on hostile witnesses and contradictory defence evidence, leading to a manifest miscarriage of justice.

9.10. It was therefore urged that the judgment and order of acquittal passed by the High Court be set aside and that the conviction and sentence recorded by the trial Court be restored thereby allowing the present criminal appeal.

10. On the other hand, Mr. Krishna Pal Singh, learned counsel appointed as a*micus curiae* for the respondent refuted the submissions advanced on behalf of the appellant – State. At the outset, he drew our attention to the deposition of Ramesh Kumar (PW-2) who stated that he was informed by Yashpal (PW-3) that his sister Saro Devi had sustained burn injuries. Thereafter, PW-2 went to the house of the respondent and found the deceased in a serious condition with extensive burn injuries. PW-3 corroborated this version and deposed that the respondent had telephonically informed him on 07.12.2009 that Saro Devi had been burnt and that efforts should be made to save her. The statement of Ramesh Kumar (PW-2) recorded *vide* Ext. PW-12/A was treated as the FIR in the present case. The High Court found that in the said Rukka (FIR), PW-2 specifically stated that when he asked his sister as to who had set her on fire she did not disclose the name of any person. This, according to the defence, was the earliest version of the incident recorded on 07.12.2009 wherein the deceased merely stated that she had been set on fire. Though the trial Court placed primary reliance on the dying declaration (Ext. PW-1/B) recorded by PW-1

Tehsildar, the High Court found the same to be suspicious and not worthy of reliance.

10.1. The learned counsel further submitted that it is an admitted fact that villagers including the respondent himself, made efforts to extinguish the fire and rescue the deceased. PW-2 stated that he spoke to his sister on the mobile phone of the respondent during which she only said, "I got burnt, save me". Even in his statement Ext. PW-12/A treated as the FIR, she made no allegation that the respondent had poured kerosene on her or set her on fire with a matchstick. PW-2 admitted that despite repeatedly asking her as to who had set her on fire, she did not name anyone, though he personally suspected the respondent.

10.2. The learned counsel placed reliance on the testimonies of PW-4 Om Prakash, the Ward Member, PW-5 Ravindra (declared hostile), DW-2 Kamal Kishor, the eight-year-old son of the deceased and DW-1 Kamla, a friend of the deceased from the same village to contend that the respondent did not commit the alleged offence and that the deceased caught fire on her own. It was argued that the cumulative effect of the evidence on record creates serious doubt about the prosecution allegation that the respondent poured kerosene on the deceased and set her on fire. To support the plea of self-immolation, emphasis was laid on the fact that the respondent himself sustained burn injuries while attempting to rescue the deceased.

10.3. In this regard, PW-11 Dr. Vishal Thakur examined the respondent on 10.12.2009 and found burn injuries on his left hand to the extent of 3% along with a bruise on the right elbow and issued the MLC (Ext. PW-11/C). It was submitted that the conduct of the respondent in immediately informing the relatives of the deceased further strengthens the defence version that the deceased herself poured kerosene and set herself on fire.

10.4. It was further submitted that although the prosecution relied heavily on the dying declaration allegedly recorded by PW-1 Tehsildar on 08.12.2009, the High Court rightly found the same to be suspicious and untrustworthy. PW-1 stated that he reached the hospital at around 11.00-11.15 a.m. on 08.12.2009 to record the dying declaration and claimed to have informed the police about the same. However, when confronted with his statement under Section 161 Cr.P.C. no such fact was found recorded therein. PW-2 in his examination-in-chief stated that the Tehsildar came to the hospital in the evening of 08.12.2009, though later stated that the dying declaration was recorded at about 11.30 a.m. PW-1 further stated that the Deputy Superintendent of Police was present at the time of recording of the dying declaration and had appended his signature thereto.

10.5. The learned counsel contended that the very presence of police officers at the time of recording the dying declaration casts a serious doubt on its authenticity as ideally no police official ought to be present at that stage. This

circumstance, according to the defence, gives rise to a strong suspicion that the statement was manipulated in connivance with the police and that PW-1 merely signed a statement that had already been prepared. This submission was sought to be supported by the testimony of PW-10, the Deputy Superintendent of Police, who stated that the statement was recorded by the Tehsildar and signed by him. However, in cross examination, PW-10 admitted that he could not recall whether the statement had been recorded by ASI Santosh Kumar and stated that it was dictated by the Tehsildar word by word after questioning the deceased. It was argued that this indicates that the statement was, in fact, written by a police official signed by the Deputy Superintendent of Police and subsequently shown as having been recorded by PW-1. The defence further argued that ASI Santosh Kumar though cited as a prosecution witness, was deliberately withheld to conceal the true manner in which the dying declaration came to be recorded. Consequently, the dying declaration (Ext. PW-1/B), according to the defence, is of doubtful credibility and was rightly discarded by the High Court.

10.6. On the issue of motive, the learned counsel submitted that no motive whatsoever was established for the respondent to set the deceased on fire. The allegation that the respondent called the deceased a *"Kanjri"* even if accepted, could have caused humiliation to the deceased and may have prompted her to take the extreme step of self-immolation. This possibility, it was contended, is consistent with the evidence on record.

10.7. It was lastly submitted that the prosecution failed to prove beyond reasonable doubt that the respondent set the deceased on fire by pouring kerosene upon her. On the contrary, the evidence supports the defence theory of self-immolation arising out of a sense of humiliation. The dying declaration relied upon by the prosecution being suspicious in nature could not, in the absence of reliable corroboration, form the sole basis for conviction. It was argued that the trial Court discarded the defence evidence without cogent reasons, whereas defence evidence is entitled to the same degree of scrutiny as prosecution evidence and cannot be rejected outright.

10.8. Placing reliance on the judgments of this Court in ***State of Haryana v. Ram Singh***[5] and ***Sanjiv Kumar v. State of Punjab***[6], the learned counsel submitted that defence witnesses must be subjected to careful and critical evaluation and ought not to be discarded merely on the ground that they were produced by the defence.

10.9. Thus, according to the learned counsel, the impugned judgment of acquittal does not call for any interference by this Court and the present criminal appeal deserves to be dismissed.

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[5] (2002) 2 SCC 426
[6] (2009) 16 SCC 487

11. We have carefully considered the submissions made on bothsides and perused the materials available on record.

12. In the present case, the appellant – State has challenged the judgment of the High Court acquitting the respondent of the offence punishable under Section 302 IPC. The trial Court earlier found the respondent guilty of committing the offence under Section 302 IPC, holding that he had caused the death of his wife by setting her on fire. Accordingly, the trial Court convicted the respondent and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 50,000/- and in default thereof, to undergo simple imprisonment for a further period of three years.

13. Before adverting to the facts of the present case, it would be apposite to refer to certain decisions delineating the contours of appellate interference with an order of acquittal. In ***Sadhu Saran Singh v. State of Uttar Pradesh and others***[7], this Court, while considering appeals against a judgment of acquittal rendered by the High Court, categorically observed that there is no absolute restriction in law on the appellate court to review and reappreciate the entire evidence upon which the order of acquittal is founded. It was further reiterated that where, upon scrutiny, the appellate court finds that the decision of the court below is based on an erroneous appreciation of evidence or is contrary to settled

[7] AIR 2016 SC 1160 : (2016) 4 SCC 357

principles of law, interference with such an order becomes not only permissible but also imperative.

13.1. In ***Rajesh Prasad v. State of Bihar and another etc.***[8] (one of us, B.V. Nagarathna, J., was a member of the Bench) this Court, after undertaking a detailed survey of the case law, summarised the circumstances under which in an appeal against an order of acquittal an order of conviction may be passed. The following paragraphs are relevant:

> *"31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:*
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> *31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed upto the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai, AIR 1981 SC 1442] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunachalam v. P.S.R. Sadhanantham, AIR 1979 (SC) 1284] An appeal cannot be entertained against an order of acquittal which, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana v. Lakhbir Singh, (1990) CrLJ 2274 (SC)]*
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> *31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:*
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> *31.2.1. Where the approach or reasoning of the High Court is perverse:*

[8] (2022) 3 SCC 471 – 3 Judge Bench

a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning; [State of UP v. Shanker, AIR 1981 SC 879]

b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were 'interested' witnesses; [State of UP v. Hakim Singh, AIR 1980 SC 184]

c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207]

d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam v. P.S.R. Sadhanantham, AIR 1979 SC 1284]

e) Where the High Court applied an unrealistic standard of 'implicit proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner. [State of UP v. Ranjha Ram, AIR 1986 SC 1959]

f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. ChampalalPunjaji Shah, AIR 1981 SC 1675] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan v. Satpal Singh, AIR 1990 SC 209].

g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish 'motive.' [State of AP v. Bogam Chandraiah, AIR 1986 SC 1899]

31.2.2. Where acquittal would result is gross miscarriage of justice:

a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of UP v. Pheru Singh, AIR 1989 SC 1205] or based on extenuating circumstances which were purely based in imagination and fantasy. [State of Uttar Pradesh v. Pussu 1983 AIR 867 (SC)]

b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial

nature. [State of Maharashtra v. Champalal Punjaji Shah, AIR 1981 SC 1675]
[Source: Durga Das Basu – "The Criminal Procedure Code, 1973" Sixth Edition Vol.II Chapter XXIX]"

13.2. In ***State of Madhya Pradesh v. Phoolchand Rathore***[9], this Court reiterated that it is ordinarily slow to interfere with orders of acquittal. However, it was clarified that where the High Court has adopted a wholly erroneous process of reasoning, misread material evidence, or ignored vital circumstances resulting in a grave miscarriage of injustice, interference is clearly permissible. The following paragraphs are instructive:

"20. Having considered the submissions and perused the record, before we proceed further, it would be useful for us to notice the law as to when it would be appropriate for this Court, exercising its power under Article 136 of the Constitution of India, to reverse an acquittal into a conviction. Normally, the Court is reluctant to interfere with an order of acquittal. But when it appears that the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, acquitted the respondent and the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice, extraordinary jurisdiction under Article 136 of the Constitution of India may rightfully be exercised (See: State of U.P. v. Sahai & Others, (1982) 1 SCC 352).

21. In State of M.P. & Others v. Paltan Mallah & Others (2005) 3 SCC 169, reiterating the same view it was observed:

> *"8. ... This being an appeal against acquittal, this Court would be slow in interfering with the findings of the High Court, unless there is perverse appreciation of the evidence which resulted in serious miscarriage of justice and if the High Court has taken a plausible view this Court would not be justified in interfering with the acquittal passed in favour of the accused and if two views are possible and the High Court had chosen one view which is just and reasonable, then also this Court would be reluctant to interfere with the judgment of the High Court."*

[9] 2023 SCC OnLine SC 537

22. In a recent decision rendered by this Court in Basheera Begam v. Mohd. Ibrahim & Others, (2020) 11 SCC 174, it was observed:

> *"190. ... Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be "not guilty". ..."*

13.3. In ***State of Uttar Pradesh v. Ajmal Beg Etc.***[10], this Court while considering appeals against an order of acquittal passed by the High Court, undertook a comprehensive examination of the scope and ambit of its power in criminal matters. The following paragraphs are opposite in this context:

"15.1. In Surajdeo Mahto v. State of Bihar, (2022) 11 SCC 800, it was held:

> *"25. It may be highlighted at the outset that although the powers vested in this Court under Article 136 of the Constitution are wide, this Court in a criminal appeal by special leave will ordinarily loath to enter into a fresh reappraisement of evidence and question the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances. While it is difficult to lay down a rule of universal application, it has been affirmed time and again that except where the assessment of the High Court is vitiated by an error of law or procedure, or is based on misreading of evidence, or is inconsistent with the evidence and thus has led to a perverse finding, this Court will refrain from interfering with the findings of the courts below."*

15.2. On a reading of various judgments, viz., Ramaniklal Gokaldas v. State of Gujarat, (1976) 1 SCC 6, Nadodi Jayaraman v. State of T.N., 1992 Supp (3) SCC 161, Banwari Ram v. State of U.P. (1998) 9 SCC 3, the generally accepted standard – which it ought to be stated, is not a rule – is that when the Courts below concurred, this Court does not enter into the reappreciation of the evidence, in a criminal case. In the present case, the Courts below have, in fact, arrived at opposite findings and as such, to set the matter to rest either by conviction or acquittal, this Court must analyse the evidence on record."

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[10] 2025 SCC OnLine SC 2801

13.4. Thus, it is vivid that where a judgment of acquittal is found to be manifestly erroneous, perverse, or founded on a misreading of evidence or incorrect application of law, this Court would be justified to set aside the acquittal and record a conviction, albeit exercising such power with circumspection and in exceptional circumstances.

14. Guided by the above principles, we now proceed to examine the facts of the present case. In order to substantiate its case, the prosecution examined twelve witnesses (PW-1 to PW-12) and marked the relevant documents and material objects. The defence, in turn, examined two witnesses (DW-1 and DW-2). A brief and structured appreciation of the oral evidence is as under:

- PW-1 Amar Singh, the Tehsildar-cum-Executive Magistrate, deposed that pursuant to a written direction (Ext. PW-1/A), he proceeded to the Civil Hospital, Chamba on 08.12.2009 at about 11.00-11.15 a.m. for the purpose of recording the statement of Saro Devi. Before recording the statement, he ascertained from the attending doctor that the patient was in a fit condition to make a statement. Thereafter, he recorded her statement, which is on record as Ext. PW-1/B. According to PW1, the deceased stated in clear and unequivocal terms that her husband had sprinkled kerosene oil upon her and set her on fire with a matchstick. She further stated that the respondent used to abuse her by calling her *"Kanjri"* and had asked her to leave the house. PW-1 deposed that the deceased

remained conscious throughout, affixed her thumb impression on the statement and that he appended the requisite certificate regarding her fitness and consciousness. He further stated that PW-10, K.D. Sharma, Deputy Superintendent of Police, was present at that time and signed the statement as a witness. In his cross examination, PW-1 categorically denied the suggestion that the statement was recorded at the instance of the police or that the deceased had not made such a statement.

- PW-2, Ramesh Kumar, the brother of the deceased, deposed that on 07.12.2009 he was informed by PW-3 Yashpal that his sister had suffered burn injuries. He stated that he contacted his sister telephonically on someone else's phone and she told him that she had been put on fire and sought help. PW-2 further stated that he immediately went to the house of the respondent and found his sister lying on the bed in a seriously burnt condition without clothes on her body. She was alive at that time and was taken by him to the hospital at Chamba. He reported the matter to the police and his statement Ext. PW-12/A was recorded, on the basis of which the FIR came to be registered. PW-2 further stated that on the next day, i.e. 08.12.2009, the Tehsildar came to the hospital and recorded the statement of his sister in his presence. Although he initially stated that the Tehsildar came in the evening, on a question put by the Court he clarified that the statement was recorded at about 11.30 a.m. He also stated that at

the time of recording of the statement, the deceased recognised him, his parents and her mother-in-law. In his cross-examination, he denied the suggestion that the deceased was unconscious or incapable of making a statement.

- PW-3, Yashpal corroborated the version of PW-2. He stated that on 07.12.2009 he received a telephonic call from the respondent informing him that Saro Devi had sustained burn injuries and seeking help to save her. He deposed that he immediately conveyed this information to PW-2, Ramesh Kumar.
- PW-4, Om Prakash, a ward member, stated that upon reaching the house of the respondent, he found the deceased crying and shouting “bachao, bachao”. He further stated that upon enquiry, the deceased told him that she had herself poured kerosene oil on her. He also deposed that the police seized a kerosene can and a matchbox from the spot and took photographs. He proved the seizure memos Ext. PW-4/A and Ext. PW-4/B and identified the seized articles including the kerosene can, matchbox and burnt clothes, namely, salwar, shirt, bra, dupatta and scalp hair.
- PW-5, Ravindra, the aunt of the respondent stated that the deceased did not say that the respondent had set her on fire but stated that she had herself caught fire.

- PW-6, Pawan Kumar, Head Constable deposed that on 18.12.2009 ASI Mukesh Kumar deposited three sealed parcels with him in the Malkhana, one containing burnt mat, another containing burnt clothes of the deceased and the third containing a matchstick and a plastic can with kerosene oil. He made the requisite entries in the Malkhana register. He further stated that on 19.12.2009 the said parcels were sent to the RFSL through Constable Rakesh Kumar. He also proved the deposit and dispatch of the viscera of the deceased. His testimony remained unchallenged as no cross examination was conducted.
- PW-7, Nazir Hussain, Patwari, stated that he was associated with the investigation and issued the Jamabandi and Tatima at the request of the police, which were proved as Ext. PW-17/A and Ext. PW-17/B respectively. His testimony was not subjected to cross-examination.
- PW-8, Gian Chand deposed that on 07.12.2009 at about 09.10 p.m., he received telephonic information that a woman in a burnt condition had been brought to the hospital and that necessary action be taken. He proved the recording and transmission of this information. There was no cross-examination of this witness.
- PW-9, Kuldeep Singh, ASI deposed that on 08.12.2009 at about 12.05 a.m. he received a rukka through Home Guard Balbir, on the basis of which FIR Ext. PW-9/A was registered. He proved his endorsement

Ext. PW-9/B and stated that thereafter the file was handed over to ASI Mukesh Kumar for investigation.

- PW-10, Shri K.D. Sharma, Deputy Superintendent of Police, supported the testimony of PW-1 and stated that the dying declaration of the deceased was recorded by the Tehsildar and that he signed the same as a witness. In his cross-examination, he denied the suggestion that the dying declaration was fabricated or that it was not recorded by the Tehsildar.
- PW-11, Dr. Vishal Thakur, Medical Officer, was declared hostile. He initially stated that he did not remember whether any opinion regarding the fitness of the deceased to make a statement was sought or given. However, in the cross-examination by the prosecution, he admitted having issued a written opinion Ext. PW-11/B on 07.12.2009 declaring the patient unfit to make a statement. Though he vacillated in his deposition thereafter, significantly, no question was put to him regarding the subsequent medical opinion recorded on Ext. PW-12/C dated 08.12.2009 declaring the patient fit to make a statement.
- PW-12, Mukesh Kumar, ASI and Investigating Officer deposed that on 07.12.2009 he moved an application Ext. PW-11/B seeking medical opinion and the doctor declared the patient unfit to make a statement. Based on the statement of PW-2, Ramesh Kumar (Ext. PW-12/A), the FIR (Ext. PW-9/A) was registered. He further stated that on 08.12.2009 he again sought medical opinion *vide* Ext. PW-12/C and the doctor

declared the deceased fit, pursuant to which the Tehsildar recorded her statement. He proved the site plan Ext. PW-12/D, the seizure memos, arrest of the accused, the post-mortem report Ext. PW-12/F and the FSL reports Ext. PX and PY.

- DW-1, Kamla deposed that the deceased while in the hospital and later at Tanda, told her that she had herself sprinkled kerosene oil and set herself on fire.
- DW-2, Kamal Kumar, the minor son of the deceased, stated that his grandmother had gone to attend a marriage; that the respondent was working in the kitchen garden; that on learning that his mother had caught fire, the respondent attempted to extinguish the fire with his hands and suffered burn injuries; and that thereafter his maternal uncle came and took the deceased to the hospital.

14.1. The evidence on record establishes that on 08.12.2009, PW-1 recorded the statement of the deceased in the hospital, after obtaining medical opinion regarding her fitness, which was treated as her dying declaration. PW-2 supported the prosecution version and affirmed that the deceased was conscious and capable of making a statement. PW-10 corroborated the recording of the dying declaration while PW-12 supported the prosecution case through the investigative narrative. PW-4 and PW-5 turned hostile, whereas PW-3, PW-6,

PW-7, PW-8 and PW-9 are largely formal witnesses whose testimonies do not directly bear upon the core issue of culpability.

15. Having noticed the evidence of the witnesses and the rival submissions, it is now necessary to evaluate whether the prosecution has succeeded in establishing the guilt of the respondent beyond reasonable doubt.

15.1. As noticed earlier, the prosecution case is that on 07.12.2009, the respondent poured kerosene oil upon his wife, Saro Devi, at their residence and set her ablaze by lighting a matchstick. On hearing her cries, neighbours rushed to the spot and attempted to rescue her; the respondent also participated in extinguishing the fire and sustained minor burn injuries. The deceased suffered extensive burn injuries and was admitted to the hospital at Chamba. On 08.12.2009, her statement was recorded in the hospital by PW-1, the Tehsildar-cum-Executive Magistrate, after obtaining medical opinion regarding her fitness, in the presence of PW-10, the Deputy Superintendent of Police. The deceased ultimately succumbed to her injuries on 15.01.2010 due to septic shock. The prosecution relies upon the said statement as a dying declaration under Section 32(1) of the Indian Evidence Act, 1872.

16. Before examining the evidentiary value of the dying declaration, it is apposite to note the settled legal principles governing dying declarations. Section 32(1) of the Indian Evidence Act renders admissible statements made by

a deceased person as to the cause of death or the circumstances of the transaction resulting in death. It is well settled that a dying declaration need not be made in expectation of immediate death; that a conviction under Section 302 IPC can rest solely on a dying declaration if it is found to be voluntary, truthful and reliable; and that corroboration is not a rule of law but one of prudence.

16.1. In ***Khushal Rao v. State of Bombay***[11], this Court laid down the foundational principles governing appreciation of dying declarations. In that case, the deceased had made three successive dying declarations within a span of two hours, which were to some extent contradictory. However, one aspect remained consistent in all three declarations namely that he had been attacked by two persons, Kushal Rao and Tukaram with swords and spears. Relying upon this common thread running through the declarations, which was further corroborated by medical evidence disclosing punctured and incised wounds on various parts of the body, this Court held that the declarations could be safely relied upon to convict the accused who had been named therein. While so holding, this Court expounded the principles governing the circumstances under which a dying declaration may be accepted without corroboration. In this regard, Paragraph 16 of the judgment is apposite:

> *"16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion,*

[11] 1958 SCR 552

1. that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

2. that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

3. that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

4. that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

5. that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

6. that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

16.2. The above principles were subsequently summarised by this Court in ***Smt. Paniben v. State of Gujarat***[12]**,** as follows:

"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. ***(Munnu Raja v. State of M.P. [(1976) 3 SCC 104])***

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. ***(State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552])***

[12] 1992 SCC OnLine SC 355 : AIR 1992 SUPREME COURT 1817

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. ***(K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618]***

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. ***(Rasheed Beg v. State of M.P. [(1974) 4 SCC 264])***
(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. ***(Kake Singh v. State of M.P. [1981 Supp SCC 25])***

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. ***(Ram Manorath v. State of U.P. [(1981) 2 SCC 654])***

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. ***(State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455])***

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. ***(Surajdeo Oza v. State of Bihar [1980 Supp SCC 769])***

(ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. ***(Nanhau Ram v. State of M.P. [1988 Supp SCC 152])***

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. ***(State of U.P. v. Madan Mohan [(1989) 3 SCC 390])****"*

16.3. In ***Laxman v. State of Maharashtra***[13], a Constitution Bench held that medical certification of fitness is not an absolute requirement and that the testimony of the Magistrate recording the dying declaration would suffice if the Court is otherwise satisfied about the mental fitness of the declarant.

[13] (2002) 6 SCC 710

16.4. In ***State of U.P. v. Veerpal***[14], it was reiterated that a conviction can be sustained solely on the basis of a dying declaration even in the absence of corroboration, provided it inspires confidence. In the said case, the deceased in her dying declaration named the person who had set her on fire. Even in the statement recorded under section 161 Cr.P.C., the deceased stated that her father-in-law had attacked her with a stick with the intention to kill her and that as a result, she locked herself in the room and set herself ablaze. Considering the dying declaration of the deceased, which was found to be voluntary, truthful and reliable, this Court set aside the judgment of acquittal passed by the High Court and restored the conviction of the accused for the offences punishable under Section 302 read with Section 34 IPC recorded by the trial Court.

17. In light of the aforesaid principles, the dying declaration in the present case inspires full confidence. It was recorded on 08.12.2009 by PW-1, the Tehsildar, a neutral and independent public officer. Prior to recording the statement, medical opinion regarding the fitness of the deceased was duly obtained. PW-1 categorically stated that the deceased was conscious, oriented and capable of making a statement. This version stands corroborated by PW-10, the Deputy Superintendent of Police and PW-2, the brother of the deceased, both of whom deposed that the deceased recognised them and responded

[14] (2022) 4 SCC 741

appropriately to questions. Although PW-11, the Medical Officer vacillated on certain aspects, the dying declaration cannot be discarded on that ground alone. The declaration clearly and unequivocally attributes the act of pouring kerosene oil and igniting the fire to the respondent. It bears the thumb impression of the deceased and was recorded in the presence of senior officers. There is no material on record suggestive of tutoring, coercion or manipulation.

18. The High Court disbelieved the dying declaration primarily on two grounds: (i) an alleged inconsistency with respect to the time at which the statement was recorded; and (ii) a doubt as to whether PW-1 himself recorded the statement or merely dictated it. In our considered opinion, neither ground is sustainable.

18.1. As regards the first aspect, PW-2 initially made a vague reference to the evening; however, upon a clarification sought by the Court, he categorically stated that the statement was recorded at around 11.30 a.m. This clarification aligns with the testimonies of PW-1 and PW-10. Such a minor discrepancy, which stood satisfactorily explained, does not go to the root of the prosecution case, especially when the factum of recording of the dying declaration on 08.12.2009 stands firmly established.

18.2. With regard to the manner of recording, PW-1 clearly deposed that he recorded the statement of the deceased after putting questions to her. PW-10

clarified that the statement was recorded under the supervision and authority of PW-1, who ensured that the answers given by the deceased were correctly reduced into writing. Recording a dying declaration under the supervision of a Magistrate does not render it invalid. No suggestion was put to PW-1 in cross-examination that he did not record the statement or that he abdicated his responsibility. The High Court thus discarded the dying declaration on conjectures not borne out by the evidence.

18.3. In any event, the law does not prescribe any rigid form for recording a dying declaration. So long as the Court is satisfied that the declaration is voluntary, truthful and reliable, hyper-technical objections cannot form the basis for its rejection.

19. In the present case, it is true that the Rukka (FIR) records that the deceased did not initially name the assailant. However, it is settled law that an FIR is not expected to be an encyclopaedia of the entire prosecution case. At that stage, the immediate concern of the family members was the survival of the victim who had sustained nearly 70% burn injuries. Such an omission in the earliest version, in these circumstances, cannot *ipso facto* discredit the subsequent dying declaration recorded in accordance with law.

20. PW-4 and PW-5 were declared hostile and attempted to attribute oral statements to the deceased suggesting self-immolation. The trial Court rightly

rejected their testimony. Their version is essentially hearsay and was never disclosed at the earliest available opportunity. In ***Bhajju v. State of Madhya Pradesh***[15], this Court held that the testimony of a hostile witness can be relied upon only to the extent it is corroborated by other reliable evidence. Recently, in ***Gurdeep Singh v. State of Punjab***[16], this principle was reiterated. In the present case, no such corroboration exists in respect of the testimony of PW-4 and PW-5, whose statements are unsupported by any independent or reliable evidence on record.

21. The defence witnesses, DW-1 and DW-2, stand on no better footing. DW-1 admitted in cross-examination that she had reached the spot only after the deceased had already caught fire and was not present at the time of the incident. Her testimony is thus not based on direct knowledge and lacks corroboration. DW-2, the minor son of the deceased, does not claim to have witnessed the act of pouring kerosene or igniting the fire. At best, his testimony indicates that the respondent attempted to extinguish the fire, a circumstance which does not negate or dilute the evidentiary value of the dying declaration. The High Court without a proper appreciation of the probative value of these testimonies, erred in placing reliance upon them to overturn the conviction recorded by the trial Court.

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[15] (2012) 4 SCC 327

[16] 2025 SCC OnLine SC 1669

22. The plea of self-immolation on behalf of the respondent does not inspire the confidence of this Court. The alleged conduct of the respondent in attempting to extinguish the fire and sustaining minor burn injuries does not, by itself, exonerate him from culpability. Such conduct can equally be consistent with an attempt to create an appearance of innocence after the commission of the offence. The defence witnesses are either interested or partisan and fail to rebut the consistent and cogent prosecution evidence.

23. Motive assumes significance, primarily in cases based on circumstantial evidence. Where there is direct evidence in the form of a credible and trustworthy dying declaration, the absence of strong proof of motive is not fatal to the prosecution case. This position has been consistently affirmed by this Court in ***State of Andhra Pradesh v. Bogam Chandraiah and another***[17], ***Dasin Bai @ Shanti Bai v. State of Chhattisgarh***[18], and ***Purshottam Chopra v. State (NCT of Delhi)***[19]. In the present case, the evidence on record discloses that the respondent subjected the deceased to frequent quarrels, humiliation and verbal abuse, including branding her a *"Kanjri"* and repeatedly asking her to leave the matrimonial home. The dying declaration itself refers to persistent matrimonial discord and ill-treatment thereby furnishing a plausible background for the commission of the offence. In any event, the prosecution is not required to

[17] (1986) 3 SCC 637
[18] 2015 SCC OnLine SC 107
[19] 2020 SCC OnLine SC 6

establish motive with mathematical precision and failure to conclusively prove motive does not weaken an otherwise reliable and cogent case.

24. Upon an overall appraisal of the evidence, we are satisfied that the dying declaration of the deceased, Saro Devi, is voluntary, truthful and reliable. It was recorded by a competent authority at a time when the deceased was conscious, oriented and capable of making a statement. The minor discrepancies highlighted by the High Court do not create any dent in the credibility of the dying declaration. Therefore, the prosecution has proved beyond reasonable doubt that the respondent committed the offence punishable under Section 302 IPC.

25. The trial Court correctly relied upon the dying declaration and the surrounding circumstances to record the conviction of the respondent. The High Court erred in discarding this crucial piece of evidence on speculative and hyper-technical grounds and in placing undue reliance on the testimonies of hostile and defence witnesses. The judgments relied upon by the respondent do not lay down any absolute proposition that a dying declaration must invariably be discarded in the absence of corroboration. Each case must necessarily turn on its own facts.

26. We are, therefore, of the considered view that the High Court fell into manifest error in reversing the well-reasoned judgment of conviction recorded

by the trial Court by re-appreciating the evidence in a manner contrary to the settled principles governing appellate interference.

27. Accordingly, the criminal appeal filed by the appellant – State is allowed. The impugned judgement of acquittal passed by the High Court is set aside. Consequently, the judgement of conviction and order of sentence passed by the trial Court are restored. The respondent shall surrender forthwith to undergo the remaining sentence, failing which the trial Court shall take appropriate steps in accordance with law.

28. Pending application(s), if any, shall stand disposed of.

……J.
[B.V. NAGARATHNA]

……J.
[R. MAHADEVAN]

NEW DELHI;
JANUARY 15, 2026.